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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

NO. 393

ROBERT B. BAKER, Petitioner,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDIX

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IN THE

Supreme Court of the United States

.... TERM, 1961

NO. ....

ROBERT B. BAKER, Petitioner,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, affirming his conviction for violation of Section 302 (b) of the Labor Management Relations Act of 1947; 29 U. S. C. 186 (b).

OPINIONS BELOW

The opinion of the District Court denying petitioner's motion for judgment of acquittal is reported at 189 F. Supp. 796. The opinion of the Court of Appeals has not yet been reported. (App. 1a).

JURISDICTION

The judgment of the Court of Appeals was entered on July 14, 1961, and the petition for rehearing was denied on August 9, 1961 (App. 12a). The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254.

QUESTIONS PRESENTED

1. Whether the testimony of defendant before the Senate Committee on Improper Activities in the Labor or Management Field was improperly admitted in contravention of Title 18 U. S. C. 3486.

2. Whether the Courts below improperly applied the decisions in *Opper v. United States,* 348 U. S. 84, and *Smith v. United States,* 348 U. S. 147, in distinguishing admissions before a Congressional Committee from other types of admissions.

3. Whether compelled testimony of a defendant under subpoena by the Senate Committee on Improper Activities in the Labor or Management Field may be used against him in a subsequent criminal prosecution.

STATUTES INVOLVED

Section 302(b) of the Labor Management Relations Act of 1947 provides as follows:

> "It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value."

The Act of June 25, 1948, c. 645, 62 Stat. 833, 18 U. S. C. 3486 provides as follows:

> "No testimony given by a witness before either House, or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal

proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege."

The Act of August 20, 1954, c. 769, Section 1, 68 Stat. 745, 18 U. S. C. 3486, provides as follows:

"Title 18, United States Code, Section 3486, is amended to read as follows:

'§3486. Compelled testimony tending to incriminate witnesses; immunity

(a) In the course of any investigation relating to any interference with or endangering of, or any plans or attempts to interfere with or endanger the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy or the overthrow of its Government by force or violence, no witnesses shall be excused from testifying or from producing books, papers, or other evidence before either House, or before any committee of either House, or before any joint committee of the two Houses of Congress on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, when the record shows that— . . . .'"

"Sec. 2. The analysis of chapter 223 of title 18, United States Code, is amended by striking out

'3486. Testimony before Congress; immunity.'

and inserting in lieu thereof the following:

'3486. Compelled testimony tending to incriminate witness; immunity.'"

STATEMENT

Petitioner was indicted, tried and convicted in the United States District Court for the Western District of Pennsylvania on a three count indictment charging a violation of Section 302 (b) of the Labor Management Relations Act of 1947. This statute interdicts the passage of money or other thing of value between a representative of employees engaged in an industry affecting commerce and the employer of such employees.

The indictment alleged that petitioner was a representative of employees of Exhibitors Service Company who were engaged in an industry affecting commerce. Count 1 charged the petitioner with obtaining the sum of $100.00 from George F. Callahan, Jr., President of Exhibitors Service Company, on or about the 21st day of December, 1957. Count 2 charged petitioner with obtaining the sum of $125.00 from George F. Callahan, Jr., President of Exhibitors Service Company, on or about the 28th day of December, 1957, and Count 3 charged the petitioner with obtaining the sum of $300.00 from said George F. Callahan, Jr., on or about the 29th day of January, 1958.

The government introduced evidence tending to establish the following facts:

Petitioner, Baker, was an organizer for the Central Conference of Teamsters and worked under the supervision of James R. Hoffa and Harold Gibbons. The witness Hoffa testified that the employees of Exhibitors Service Company were members of the Eastern Conference of Teamsters and that the petitioner had no authority to come into the Eastern Conference; that as an organizer he had no authority to make any settlements

or enter into any matters regarding wages, conditions and hours of employment.

The employees of Exhibitors Service Company were involved in a jurisdictional dispute between two locals of the International Brotherhood of Teamsters. Negotiations between the employees and the local union were unsuccessful. In December, 1957 petitioner met with the President of Exhibitors Service Company, George F. Callahan, Jr. Mr. Callahan testified that he loaned petitioner various sums of money and that petitioner promised to do what he could to arrange a meeting between the local union representatives and management. The meeting was arranged and subsequently the strike was settled.

The petitioner testified before the Senate Committee in August, 1958. The indictment was returned September 21, 1959. The evidence to establish petitioner's representative status was his own testimony before the Senate Committee on Improper Activities in the Labor or Management Field, which testimony was introduced in evidence at the trial, over petitioner's objection.

At the conclusion of the government's case, petitioner moved for judgment of acquittal on the ground, inter alia, that the prosecution had failed to prove that petitioner was a representative of the employees of Exhibitors Service Company. This motion was denied and petitioner introduced evidence of various local union officials to establish that petitioner was not a representative of the employees of Exhibitors Service Company.

The jury returned a verdict of guilty under all counts of the indictment. The petitioner was sentenced to imprisonment for a period of one year (the maximum

prison term allowed by Section 302 of the Labor Management Relations Act of 1947) on Count 1 and to pay a fine of $400.00; imprisonment for a period of one year and a fine of $400.00 on Count 2; and imprisonment and a fine of $400.00 on Count 3, all sentences to run consecutively, but the prison term imposed at Count 3 was suspended and petitioner was placed on probation for a period of five years, on condition that the fines and costs be paid.

The Third Circuit subsequently affirmed petitioner's conviction. It held that there was sufficient corroboration of petitioner's representative status to permit the introduction in evidence of his admissions before the Senate Committee on Improper Activities in the Labor or Management Field. It further held that the Act of August 24, 1954, 68 Stat. 745, 18 U. S. C., 1958 ed., Section 3486 superseded the Act of June 25, 1948, 62 Stat. 833, 18 U. S. C., 1952 ed., 3486.

REASONS FOR GRANTING THE WRIT

This case raises the issue as to whether the Act of 1954, 68 Stat. 745, 18 U. S. C., 1958 ed., Section 3486 repealed the existing Immunity Act of 1948 or simply was an amendment thereto. This issue was neither raised nor answered by the decision of this Court in *Ullman v. United States*, 350 U. S. 422. The widespread activity of Congressional committees makes it essential that this Court clarify the potential use of the testimony of the witness before such committee in subsequent criminal prosecutions. It also raises the issue of whether the Court of Appeals for the Third Circuit has narrowed the applicability of *Opper v. United States*, 348 U. S.

84, and *Smith v. United States,* 348 U. S. 147, so as to require less corroboration prior to the introduction in evidence of the admissions before a Senate committee than is required for the introduction in evidence of admissions made to law enforcement agents or others. It further raises the issue of whether compelled testimony by a witness subpoenaed before a Senate committee may be used against him in a subsequent criminal prosecution.

1. Petitioner's principal defense in this case was that, as an organizer for the Central Conference of Teamsters, he was not a representative within the meaning and intent of Section 302 (b) of the Labor Management Relations Act of 1947. To establish this necessary element, the prosecution had to rely on the testimony of the petitioner before the Senate Committee on Improper Activities in the Labor or Management Field. It is clear that the Immunity Act of 1948 prohibits the use of the testimony of a witness before a Congressional committee in any criminal proceeding against such witness in any court. *Adams v. Maryland,* 347 U. S. 179. The Court of Appeals held, however, that the 1948 statute was superseded and not supplemented by the Act of 1954. The Act of 1948 was a general immunity statute. The amendment by the Act of 1954 added thereto provisions not here material relating to Congressional investigations concerning national security and seditious conduct. The legislative history of the Act of 1954 and Section (a) thereof indicate the intent of Congress to enact legislation to compel the testimony of witnesses in the course of investigations relating to any interference with or endangering of the national security or defense of the United States by treason,

sabotage, espionage, sedition, seditious conspiracy or the overthrow of the government by force or violence.

That Congress did not intend to repeal the Act of 1948 is evidenced by the fact that the amendment to the Act commences with sub-divisions (a), (b), (c) and (d) and adds a separate section to the original Act referred to as section 2. It is apparent, therefore, that there had to be a section 1 to this Act to which the subdivisions attached and which could numerically be followed by section 2. A reference to the opening sentence of the amendatory Act clearly indicates that Title 18, United States Code, section 3486, *is amended* and, therefore, not repealed. Had Congress intended a repealer of the earlier Act it would have so stated in unmistakable terms.

The amendment of 1954 was the enactment of a specific immunity statute concerning a limited field of Congressional, grand jury and court investigations involving interference with national security. It did not cover the same subject matter as the Act of 1948, which granted general immunity to witnesses. The debates, as disclosed by the Congressional Record, concerning the Act of 1954 indicate the purpose of the Act. Senator McCarran, the leading expondent of the immunity statute, in Volume 99, part 5 of the Congressional Record, page 6172, stated as follows:

> "Mr. President, this bill has been much discussed, and I believe most Senators are familiar with it. Its purpose is to close a loophole in the existing statute ineffective for the purpose of requiring the testimony of a witness who may claim his privilege under the Fifth Amendment, and thus

to effectuate the purpose of that statute, by putting the Congress and its committees in a position to require the testimony of such a witness by giving him, in exchange for his testimony, an immunity from prosecution equal to the scope of his privilege under the Fifth Amendment. I wish to say at this time merely that this bill is particularly important in the investigation of Communism. About the only way we are ever going to get to the bottom of the Communist conspiracy in this country is by securing the testimony of some of those who were themselves a part of that conspiracy."

Senator McCarran repeats the above argument in favor of the bill in Volume 99, part 6, page 7990 of the Congressional Record. The same argument is contained in Volume 99, part 6 of the Congressional Record at page 8341.

In the House Debates Volume 100, part 10, page 13,323, Representative Keating, speaking on behalf of the bill, stated:

"Mr. Speaker, this bill is a very important piece of legislation to further the struggle against Communist conspiracy on all fronts in the activities of investigating committees representing the legislative arm of Government and in the prosecutive functions carried on through the executive branch. It is certainly in our national interest to give our investigating committees and our prosecutors a means of loosening the tongues of important witnesses who resist all inquiries into their activities by taking refuge behind the Fifth Amendment . . . Now, there is another very important respect

in which this bill as reported for action today differs from the bill passed in the other body and also differs from the original administration-endorsed measure H. R. 6899, and that is this:

> An amendment was offered and accepted by the Committee . . . which limited the operation of this entire procedure to crimes involving the national security so that this bill as now worded and now before us exclusively applies only to investigations dealing with or prosecutions for the crimes of treason, sabotage, espionage, sedition, seditious conspiracy, and violations of certain specific statutes, all of which deal with the Communist conspiracy. It is, therefore, a very much narrower bill than originally offered."

And on page 13,324 Representative Walter reiterated what Representative Keating had already stated, to-wit:

> "This bill has been amended so that its operation is limited to cases of national security."

The Act of 1954 does not expressly by words repeal the Act of 1948. In *Leitz v. Fleming,* 264 F. 2d 311 (1959), cert. den. 361 U. S. 820, it was held:

> "The law is well settled that repeals by implication are not favored. Where two acts cover the same subject matter both should be given effect if possible. Posadas v. National City Bank, 296 U. S. 497, 56 S. Ct. 349, 80 L. Ed. 351. Furthermore, if effect can reasonably be given to both statutes, the presumption is that the earlier is intended to remain in effect. United States v. Burroughs, 289 U. S. 159, 53 S. Ct. 574, 77 L. Ed. 1096. To repeal

> a prior Act there must be a positive repugnancy between the provisions of the new law and those of the old; and even then the old law is repealed by implication only pro tanto to the extent of repugnancy . . . In order for an amending statute to operate as a repeal of the earlier Act, the intention of the legislature to repeal must be clear and manifest; otherwise, the latter Act is to be construed as a continuation of, and not a substitute for, the first Act and will continue to speak, so far as the two Acts are the same, from the time of the first enactment."

See also *United States v. Toy,* 273 F. 2d 625, 628 (footnote 8).

The Act of 1948 is a general immunity statute concerning the testimony of a witness before Congressional Committees only. The amendment of 1954 relates to specific activities enumerated in said amendment concerning national security and concerns the compelling of testimony; that is, the involuntary testimony of a witness not only before Congressional committees but before the grand jury and the court. The Act of 1948 confers general immunity to testimony before a Congressional committee without any action on the part of the committee. The Act of 1954 concerns granting of immunity by affirmative action on the part of the Government after a witness has claimed the Fifth Amendment. It is apparent that the amendment of 1954 does not cover the same subject matter and differs in scope, procedures, intent and in the time, place and method of application.

The Act of 1948 and its amendment of 1954 are not antagonistic to each other and do not cover the same

immunity provisions. The amendment of 1954 removes specific matters from the operation of the general immunity statute.

There are innumerable examples where Congress, intending to repeal certain legislation, has specifically and clearly expressed that intention. For example, in U. S. Code Congressional and Administrative News, Special Pamphlet No. 14, page 3544, issued September 15, 1960, various sections of titles in the United States Code which have been repealed may be found. Congress knows how to repeal an act or a section of an act. It has not done so by the amendment of 1954.

The effect of the decision of the Court of Appeals is to hold that Congress intended to give immunity only to Communists and other subversives and saboteurs while denying immunity to all other citizens not engaged in Communist and subversive activity. It is inconceivable that Congress intended this result.

The holding of the Court of Appeals results in an unconstitutional application of the Act of August 20, 1954, 68 Stat. 745, 18 U.S.C., 1958 ed., Section 3486, for the reason that when petitioner testified before the Senate Committee, he had a right to know whether the Immunity Act of 1948 prohibited the use of his testimony in later criminal proceedings, or whether the Act of 1954 superseded and repealed the former Immunity Act. This is especially apposite since the decision of the Court of Appeals is the first judicial pronouncement that the Act of 1948 was repealed and not amended. Where reasonable minds may differ as to the application of the later Immunity Act, the same should be construed in favor of the petitioner so as to afford him procedural

due process of law. An act, though constitutional, may in its application become unconstitutional. As applied by the opinion of the Court of Appeals to the facts in the case *sub judice,* the Act of 1954 would be unconstitutional. If the petitioner, instead of relying on the Immunity Act of 1948, had refused to testify, the government could not have used *his testimony* to convict him. Having testified under subpoena and through coercion before the Senate Committee, he should not now be stripped of all statutory and constitutional guarantees.

2. Assuming *arguendo* that the Act of 1954 repealed the Immunity Act of 1948, the second question presented by this case is the kind and quantum of evidence which the government must adduce before admissions may be introduced into evidence. As stated, it was essential that the government prove that the petitioner was an authorized labor representative and his testimony before the Senate Committee used to prove this fact was in the nature of admissions or confessions and requires corroboration. This Court held in *Opper v. United States,* 348 U.S. 84, at page 89, as follows:

> "In the United States our concept of justice that finds no man guilty until proven has led our state and federal courts generally to refuse conviction on testimony concerning confessions of the accused not made by him at the trial of his case . . . (p. 90) We think that an accused's admissions of esential facts or elements of the crime, subsequent to the crime, are of the same character as confessions and that corroboration should be required . . . (p. 91) Facts admitted that are immaterial as to guilt or innocence need no discussion. But statements of the accused out of court that show ele-

ments of the crime, here payment of money, necessary to supplement an otherwise inadequate basis for a verdict of conviction, stands differently. Such admissions have the same possibilities for error as confessions. They, too, must be corroborated."

And continuing on page 93, this court said:

"However, we think the choice rule to be that the corroborative evidence need not be sufficient, independent of the statements, to establish the *corpus delicti*. It is necessary, therefore, to require the Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement. Thus, the independent evidence serves a dual function. It tends to make the admission reliable, thus corroborating it while also establishing independently the other necessary elements of the offense. . . . It is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth. Those facts plus the other evidence besides the admission must, of course, be sufficient to find guilt beyond a reasonable doubt."

The case of *Smith v. United States,* 348 U. S. 147, involved an income tax criminal prosecution, which was based on the government's theory of net worth. The first issue before the court was whether the requirement of corroboration should be applied to the crime of tax evasion. The Court held:

"As to this crime it cannot be shown that the crime has been committed without identifying the accused. Thus we are faced with the choice here of applying the corroboration rule to this offense and

> according the accused even greater protection than the rule affords to a defendant in a homicide prosecution, . . . or of finding the rule wholly inapplicable because of the nature of the offense, stripping the accused of this guarantee altogether. We chose to apply the rule, with its broader guarantee, to crimes in which there is no tangible *corpus delicti,* where the corroborative evidence must implicate the accused in order to show that a crime has been committed."

The Court then held that the defendant's statement as to his opening net worth must be corroborated.

In light of the *Opper* and *Smith* cases, supra, counsel for petitioner objected to the introduction of petitioner's testimony before the Senate Committee, which objection was overruled. The Court of Appeals held that the witness Hoffa testified that the strike at Exhibitors Service Company had come to his attention and that he may have discussed the matter with petitioner. The Court then stated that "Shortly thereafter appellant came to Pittsburgh and sought to promote a negotiated settlement of the strike." (App. 7a). The only affirmative evidence in the record as to when the witness Hoffa discussed this matter with management was the testimony of the witness Callahan. This witness testified he first met Hoffa on January 27, 1958. The indictment variously charges petitioner with receiving payments on or about December 21 and 28, 1957 and January 29, 1958. The record, therefore, does not sustain the finding of the Court of Appeals that the chronology of events is some indication of petitioner's representative status. The Court of Appeals further found petitioner was "recog-

nized as a representative of higher authority in the Teamsters' organization" (App. 8a). It is submitted that even if we assume that there was evidence to find that petitioner was a representative of higher authority in the Teamsters' organization, such a finding does not establish that petitioner was a representative within the meaning and intent of Section 302 (b) of the Labor Management Relations Act of 1947, which requires that petitioner be found to be a representative of the employees of the employer alleged to have paid him the money.[1]

U. S. v. Ryan, 350 U. S. 299, did not decide whether any official of a union is *ex officio* a representative of employees under Section 302 (b) of the Labor Relations Management Act of 1947. In *Brennan v. United States,* 240 F. 2d 253, (C.A. 8, 1957), cert. den. 77 S. Ct. 718, it was held that the term "labor representative" "includes any person who is empowered, authorized or designated in any way, directly or indirectly, by any employee or employees, to represent such employee or employees in any matter relating to their wages or hours or working conditions by standing in the place of such employee or employees in any responsible dealing with the employer involving such matters." The opinion of the Court of Appeals does not define whether petitioner's conviction is affirmed on the basis of being a representative in an *ex officio* capacity or whether the conviction is affirmed on the basis of being a representative of the employees of the employer, Exhibitors Service Company. If the

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1. The Act of September 14, 1959, Pub. L. 86-257, Title 5, Section 505, 73 Stat. 537, 29 U.S.C. 186 amended this requirement but is not here material as the events occurred prior to the enactment of said amendment.

affirmance of the conviction by the Court of Appeals is on the former, it fails to consider whether the petitioner is within the purview of the Act as charged in the indictment, and if on the latter, there is no evidence to sustain a conviction.

The fact that the admission or confession consisted of testimony before a Senate committee does not clothe it with such consideration by the courts as to trustworthiness as employed by the Court of Appeals. In fact, a mere reading of the record of Senate committee hearings makes it apparent that witnesses are in greater need of constitutional protection in Senate committee hearings than in mere instances of admissions or confessions made elsewhere.

Rather than narrowing the applicability of the *Opper* and *Smith* cases, *supra,* compelled admissions secured by subpoena surely stand on a different footing than voluntary statements and require at least strict compliance with the rules set forth in said cases.

3. The petitioner was subpoenaed to testify before the Senate Committee on Improper Activities in the Labor or Management Field. He was called as a witness, the oath administered and questioned extensively by Committee members. He was represented by counsel. His testimony is printed in Part 37 of the hearings before the Senate Committee on Improper Activities in the Labor or Management Field, 85th Congress, Second Session, on hearings held November 5, 1957: May 9, August 13, 14, 15, 19 and 20, 1958, page 14059. Had petitioner refused to appear, he could have been prosecuted criminally under the provisions of 2 U. S. C. Section 192. The testimony used to convict him was brought out by repeated Committee questions. The use of his testimony in the criminal prosecution contravenes the Fifth Amendment.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for writ of certiorari should be granted.

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13,544

UNITED STATES OF AMERICA

ROBERT B. BAKER,
Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Argued June 8, 1961

Before: BIGGS, *Chief Judge;* and HASTIE and FORMAN, *Circuit Judges.*

Opinion of the Court

(Filed July 14, 1961)

By HASTIE, *Circuit Judge.*

Appellant Baker, an organizer for the International Brotherhood of Teamsters, has been convicted of unlawfully receiving money from an employer in violation of Section 302 (b) of the Labor Management Relations Act of 1947, 61 STAT. 157, 29 U.S.C., 1952 ed., § 186 (b). The alleged offenses occurred in 1957 and 1958, before the 1959 amendment of Section 302 (b), 73 STAT. 537, 29 U.S.C., Supp. I, 1959, § 186 (b).

With exceptions not relevant here, the statute makes it unlawful "for any representative of any em-

ployees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value". The indictment charged that on three occasions Baker, acting as a representative of employees of Exhibitors Service Co., unlawfully accepted money from the president of the corporate employer. Each of the three payments was the subject of a separate count of the indictment. Baker was convicted on all three counts. This appeal followed.

Appellant's first point is that, on the evidence, the jury could not reasonably have concluded that the payments were anything other than loans, which he says were not prohibited by the statute. The trial judge clearly instructed the jury that acceptance of money as a loan would not violate the Act. Thus, the verdict expresses the jury's conclusion that these payments were not loans. We shall demonstrate this was a permissible conclusion on the evidence. It is, therefore, unnecessary to decide whether the court's interpretation of the statute as not prohibiting loans was unduly favorable to the defendant.[1]

The evidence shows that on December 18, 1957, the employees of Exhibitors Service Co., who were members of Teamsters Local 211, went on strike. Later that month appellant came to Pittsburgh where Exhibitors maintained its headquarters, visited George Callahan, the president of Exhibitors, and undertook to arrange

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1. The Supreme Court left this question open in *United States v. Fruehauf*, 1961, 365 U.S. 146. The issue will not arise in future cases because the 1959 amendment of Section 302(b) specifies loans among the types of transactions prohibited.

a meeting between the parties as a first step toward settling the strike. At the conclusion of their first discussion of this labor dispute, Callahan gave Baker one hundred dollars. In the court below Callahan testified: "I gave him a hundred dollars, and I said, 'this will cover your expenses for such a meeting or meetings', and—that's it". It is not contended that anything to the contrary was said on that occasion, or that it was then made manifest that either party viewed the transaction as a loan. Several days later the two men met again and Callahan gave the appellant seventy-five dollars saying: "This will see you back to Detroit". During January the men met once more and discussed Callahan's labor problems. At that time, again according to Callahan's testimony, Baker complained of financial difficulties, but did not ask for money. However, since the two had now become friendly, Callahan volunteered to let Baker have three hundred dollars. Callahan quoted the appellant as saying: "I will accept it on a loan basis." It is conceded, however, that no evidence of indebtedness was given and no repayment has been made.

In August, 1958, Callahan appeared as a witness before a committee of the United States Senate investigating labor management relations. On that occasion he was questioned about various transactions, including his dealings with the appellant. It was not until after these hearings that Callahan wrote to Baker requesting for the first time that Baker repay the sums which he had received from Callahan.

We think a jury could reasonably have been convinced on this evidence that the designation of the pay-

ments as loans represented a reappraisal of the transactions by the parties after the Senate investigation had given them publicity and had brought their propriety into question. The fact that Callahan admitted tendering the first two payments to compensate appellant for the time and expense involved in his helpful visit to Pittsburgh greatly strengthens the logical inference that the loan theory was an afterthought. We are satisfied that proof was adequate on this aspect of the case.

An entirely different question is raised by appellant's second contention. It is argued that during the trial the government introduced and placed principal reliance upon incompetent evidence in its effort to prove that Baker was acting as a "representative" of the employees of Exhibitors when he received money from Callahan. The strongest evidence of appellant's representative status was his own testimony at the already mentioned Senate Committee hearing, which was introduced in evidence over appellant's objections in the court below. Before the Senate Committee appellant had testified that as a union official he worked under the direction of "Mr. Harold Gibbons and Mr. James R. Hoffa". Mr. Hoffa, who testified in the present case, was identified as an International Vice President of the Teamsters and a member of the International Executive Committee. Appellant also testified before the Senate Committee with reference to the Exhibitor's strike that "I was sent in there to try and arbitrate and get the contracts signed and settled". He added: "I went in there to see what I could do in trying to get the people back to work. . . . I undertook to get in there and see that the strike would be settled". He also testified that he "went to the [local] union office and sat down and

discussed the strike that was in progress, and we wanted to get that ended". He explained: "It is my job to try and end strikes as well as organize them". At another point he testified that although he was an organizer for the "Central Conference", an area which did not include Western Pennsylvania, he on occasion had to go elsewhere to settle strikes.

Appellant urges that the introduction of these admissions as evidence of the capacity in which he acted and the role he played in the negotiations for the settlement of the Teamsters' strike at Exhibitors was erroneous on two grounds. First, he says that such admissions may be used as evidence only if they are corroborated, and that corroboration is lacking here. Second, he claims that an applicable statute prohibits the use of testimony before a congressional committee as evidence against the witness in any future criminal proceedings.

We consider first the problem of corroboration. In *Opper v. United States,* 1954, 348 U.S. 84, the Supreme Court considered a conviction of bribing a federal officer. At the trial the prosecution had introduced an admission previously made by the defendant that he had in fact paid money to the officer, though he did not admit that this payment was a bribe. The Supreme Court took the general position "that an accused's admissions of essential facts or elements of the crime, subsequent to the crime, are of the same character as confessions and that corroboration should be required". 348 U.S. at 90. The court then considered to what extent corroboration is required and ruled as follows.

". . . we think the better rule to be that the corroborative evidence need not be sufficient, independent of the statements, to establish the *corpus delicti*. It is necessary, therefore, to require the Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement. Thus, the independent evidence serves a dual function. It tends to make the admission reliable, thus corroborating it while also establishing independently the other necessary elements of the offense. . . . It is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth. Those facts plus the other evidence besides the admission must, of course, be sufficient to find guilt beyond a reasonable doubt." 348 U.S. at 93.

On the same day, the Supreme Court decided *Smith v. United States*, 1954, 348 U.S. 147. The charge there was willful evasion of income tax and the prosecution had introduced in evidence an extra-judicial statement by the accused as to his net worth in 1945. This starting point was essential to the proof of increased net worth, used as a measure of income during the following years which were covered by the indictment. Considering the problem of corroboration in this context, the Supreme Court said:

"[D]ebate has centered largely about two questions: (1) whether corroboration is necessary for all elements of the offense established by admissions alone, . . . and (2) whether it is sufficient if the corroboration merely fortifies the truth of the confession, without independently establishing the crime charged . . . We answer both in the affirmative. All

> elements of the offense must be established by independent evidence or corroborated admissions, but one available mode of corroboration is for the independent evidence to bolster the confession itself and thereby prove the offense 'through' the statements of the accused." 348 U.S. 156.

In the light of these recent authoritative pronouncements, we think the prosecution's burden of corroboration in this case is satisfied if other evidence at least circumstantially suggests that the facts admitted are true. In this view of the natter, it is demonstrable that the appellant's admissions were adequately corrobrated.

Without refernce to the testimony before the Senate Committee, the evidence in this case shows that appellant was an organizer for the International Brotherhood of Teamsters and that at times his assignments came directly from James R. Hoffa, Vice President of the International and a member of the Executive Committee of the International. Hoffa himself testified that the Exhibitors strike had come to his attention and to the attention of the Executive Committee. He admitted that he may have discussed this matter with appellant. Shortly thereafter appellant came to Pittsburgh and sought to promote a negotiated settlement of the strike. He arrived at a time when the striking Teamsters' local had broken off all negotiations with management. It is clear and undisputed that the day following his first talk with management appellant obtained a resumption of face to face negotiations between the president of Exhibitors and the president of the local. This immediate acceptance of his good offices by local union leadership is some indication of representative status.

We think this body of attendant circumstances is consistent with and inferentially supports appellant's admission that he came to Pittsburgh under direction of the top leadership of the International Union for the purpose of aiding in the negotiation and settlement of the Teamsters' grievance with reference to the Exhibitors' operation. For when one considers the fact that appellant's superiors in the top leadership of the International Union knew of and were concerned with the Exhibitors strike, and the fact that appellant intervened effectively in the deadlocked negotiations almost immediately after his arrival in Pittsburgh, it becomes difficult to believe that appellant did not come to Pittsburgh and was not there recognized as a representative of higher authority in the Teamsters' organization. In other words, this evidence makes it seem very likely that appellant's admission before the Senate Committee was truthful. That is sufficient corroboration. In reaching this conclusion we also have considered that the nature and circumstances of the admissions in question provide no reason for special concern that they may be untrustworthy. The parts of appellant's prior testimony used now do not concern points which were then contentious. It is difficult to imagine anything the appellant might have thought to gain by falsely telling the Senate Committee that his superiors had authorized him to try to settle the Exhibitor strike.

As a second reason for excluding his statement made before the Senate Committee, appellant urges that the Act of June 25, 1948, 62 STAT. 833, 18 U.S.C., 1952 ed., § 3486, is a comprehensive prohibition against the use of testimony given by a witness before a congressional committee as evidence against such witness in

any criminal proceeding. Unquestionably that enactment so provides. However, we think it equally clear that the 1948 statute was superseded—not supplemented as appellant urges—by the Act of August 24, 1954, 68 STAT. 745, 18 U.S.C., 1958 ed. § 3486, which provides immunity for certain witnesses before congressional committees, but only with respect to testimony given in the course of investigations of critical areas of national security or defense. In relevant part the 1954 Act reads:

> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That title 18, United States Code, section 3486, is amended to read as follows: '§ 3486. Compelled testimony tending to incriminate witnesses; immunity
>
> "'(a) In the course of any investigation relating to any interference with or endangering of, or any plans or attempts to interfere with or endanger the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy or the overthrow of its Government by force or violence, no witness shall be excused from testifying . . . on the ground that the testimony or evidence required of him may tend to incriminate him . . . nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecutions described in subsection (d) hereof) against him in any court.
>
> "'(b) . . . .
>
> "'(c) . . . .
>
> "'(d) . . . .

"Sec. 2. The analysis of chapter 223 of title 18, United States Code, is amended by striking out '3486. Testimony before Congress; immunity.' and inserting in lieu thereof the following:
'3486. Compelled testimony tending to incriminate witness; immunity.' "

It is clear from the face of this statute that the language which precedes the paragraph designated "Sec. 2" constitutes a completely new Section 3486, reenacting the section number and substituting an entirely new text. Appellant challenges this reading because the new enactment does not begin with the words "Sec. 1." He argues that this means that the original language of Section 3486 survives as the first section of the amended statute. The obvious answer is that in enacting "§ 3486" it would be odd and confusing to designate the first paragraph as "Sec. 1". Congress merely followed the obviously orderly procedure in this situation, using letters of the alphabet rather than numbers to designate the principal subdivisions of the new Section 3486.

Appellant also misconceives the significance of the last portion of the new enactment which is designated "Sec. 2". That is a separate provision directing that the catch line of the new Section 3486, shall be substituted for the old catch line in the formal outline of the particular chapter of the Code. Indeed, to make it entirely clear that this merely formal provision is not a part of the text of Section 3486, the statutory draftsmen placed quotation marks around the new language of Section 3486 but did not similarly enclose the second section. For these reasons, we find no merit whatever in the argument that the original Section 3486 remained

in force after the new language of that section was enacted.

Appellant has urged other points, but in our judgment they are without merit and do not require discussion.

This conviction will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

Judgment

Present: BIGGS, *Chief Judge*, and HASTIE and FORMAN, *Circuit Judges.*

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

Attest:
IDA O. CRESKOFF

Dated: July 14, 1961

Judgment.

Sur Petition for Rehearing

Present: BIGGS, *Chief Judge;* and HASTIE and FORMAN, *Circuit Judges.*

After due consideration the petition for rehearing in the above-entitled case is hereby denied.

By the Court

(Sgd.) WILLIAM H. HASTIE
Circuit Judge

Dated: August 9, 1961

Judgment

Present: HASTIE and FORMAN, *Circuit Judges.*

Upon consideration of the petition by appellant,

It is ordered that the mandate of this Court issued on August 16, 1961 in the above case be, and it is hereby recalled.

By the Court,

WILLIAM H. HASTIE
Circuit Judge

August 21, 1961

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No. 393

In the Supreme Court of the United States

OCTOBER TERM, 1961

ROBERT B. BAKER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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Solicitor General,
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OPINION BELOW

The opinion of the court of appeals is not yet reported (Pet. 1a–11a). The opinion of the district court is not reported (R. 201a–215a).

JURISDICTION

The judgment of the court of appeals was entered on July 14, 1961. A petition for rehearing was denied on August 9, 1961. The petition for a writ of certiorari was filed on September 8, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether admissions made by the petitioner before a Senate committee indicating that he was a

representative of employees were sufficiently corroborated.

2. Whether the introduction in evidence of those admissions violated 18 U.S.C. 3486.

STATUTES INVOLVED

Section 302(b) of the Labor Management Relations Act of 1947 (29 U.S.C. 186(b) (1952 ed.)) provides as follows:

> It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

Prior to its amendment by the Act of August 20, 1954, *infra*, 18 U.S.C. 3486 (1952 ed.), read as follows:

> § 3486. *Testimony before Congress; immunity.*
>
> No testimony given by a witness before either House, or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege.

The Act of August 20, 1954, 68 Stat. 745, provides as follows:

> *Be it enacted* * * *, That title 18, United States Code, section 3486, is amended to read as follows:

"§ 3486. *Compelled testimony tending to incriminate witnesses; immunity.*

"(a) In the course of any investigation relating to any interference with or endangering of * * * the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy or the overthrow of its Government by force or violence, no witness shall be excused from testifying * * * [before any congressional committee] on the ground that the testimony or evidence required of him may tend to incriminate him * * * [if two-thirds of the committee authorize the granting of immunity and an order requiring the testimony is entered by the appropriate district court]. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is so compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding * * * against him in any court.

"(b) [Omitted; deals with notice to Attorney General before granting immunity.]

"(c) [Omitted: deals with compelling testimony and granting immunity in certain judicial proceedings.]

"(d) No witness shall be exempt under the provisions of this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section."

SEC. 2. The analysis of chapter 223 of title 18, United States Code, is amended by striking

out "3486. Testimony before Congress; immunity." and inserting in lieu thereof the following:

"3486. Compelled testimony tending to incriminate witness; immunity."

STATEMENT

On April 7, 1960, petitioner was convicted in the Western District of Pennsylvania on three counts of accepting money from an employer while acting as a labor union representative, in violation of 29 U.S.C. 186(b). He was sentenced to serve one year imprisonment and to pay $400 on each of three counts, the sentences to run consecutively. The prison term imposed on count three was suspended and the petitioner placed on probation for five years.

The evidence out of which the convictions arose may be summarized as follows:

In 1957 and 1958, the Exhibitors Service Company (hereinafter referred to as Esco) located at McKees Rocks, Pennsylvania, was engaged in business as a common carrier operating between points in Pennsylvania, eastern Ohio and northern West Virginia under authorization of the Interstate Commerce Commission (R. 93a–94a).[1] During this period, George F. Callahan, Jr., was president and treasurer of Esco. Most of the company's employees were members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America ("Teamsters")

[1] "R." refers to the copy of the trial transcript which was lodged in the court of appeals below and certified to this Court by the petitioner.

and affiliated with Teamsters Locals 211, 249, 110, 926 (R. 99a).

In 1952, Esco and the above-named Teamsters Locals entered into a written contract which continued in force, with oral revisions, until 1957 (R. 100a–101a). During the month of August 1957, a jurisdictional dispute arose between Locals 211 and 249 over the question of which local's members were to be hired by Esco (R. 66a–67a). During this time, Callahan and one Theodore Cozza, president of Local 211, were negotiating for the renewal of the contract between the Teamsters and Esco (R. 103a). The negotiations broke down to such a point that Cozza refused to speak to any management officials (R. 104a-105a). On December 18, 1957, the members of Teamsters Local 211, who were in Esco's employ, went on strike (R. 69a, 77a, 102a–103a).

On December 27, 1957, while the members of Local 211 were still on strike and the jurisdictional dispute had not been settled, Edward Weinheimer, an employee of Esco, introduced Callahan to the petitioner, a labor organizer in the Central Conference of Teamsters who was responsible only to James Hoffa, the Teamsters' president, and Harold Gibbons, a vice president (R. 48a, 103a, 143a–145a). One John Armand, president of Teamsters Local 128, Taxi Drivers Union, was also present (R. 131a). The labor problems of Esco were discussed (R. 104a). The petitioner promised to do what he could to alleviate the situation and stated that he would "endeavor and arrange a meeting with Mr. Cozza" (the president of Local 211 who had refused to talk to anyone from man-

agement) (104a). Callahan and the petitioner then had a private discussion before they parted. Callahan testified that (R. 104a–105a):

> * * * naturally I was appreciative of anybody doing anything that they could to help us. So * * * I gave him a hundred dollars, and I said "This will cover your expenses for such a meeting or meetings."

The petitioner's acceptance of the money is the basis of count one of the indictment (R. 105a).

The next day, December 28, 1957, a meeting between the petitioner, Cozza and Callahan did, in fact, take place through the petitioner's efforts but no progress was made (R. 106a–107a, 69a). Several days later, Callahan, Weinheimer and the petitioner met once again at the Penn-Sheraton Hotel in Pittsburgh (R. 107a). After a discussion of approximately half an hour the petitioner and Weinheimer left to check out of the hotel. Weinheimer returned alone. Callahan gave him $50 (R. 108a–109a) which Weinheimer in turn gave to the petitioner (R. 108a, 129a). All three men reassembled in front of the hotel and Callahan handed $75.00 to the petitioner stating, "This will see you back to Detroit" (R. 109a). The petitioner's acceptance of this money and the $50.00 was the basis of count 2 (R. 109a).

Callahan saw the petitioner a third time shortly thereafter, in January 1958. Once again the labor problems were discussed (R. 109a–110a). During the course of the conversation, the petitioner stated that "things weren't as good as they might be" and that "he had been promised three hundred dollars by some

party" (R. 110a). Callahan "finally" said he would "let him [the petitioner] have it" (R. 110a). The petitioner took it, stating, "I will accept it on a loan basis." No note of indebtedness was given or asked for (R. 110a). On January 28, 1958, Esco's accountant cashed a $500 check for Callahan (R. 94a–97a). The acceptance of the $300 constitutes the offense alleged in count three.

In addition to the payments for which the petitioner was indicted, Callahan testified that he sent to the petitioner an additional total of $600 on four other occasions (R. 116a, 128a–129a) as "an act of a friend and on the basis of a loan" (R. 122a). The money was sent following telephone conversations in which the petitioner made it known to Callahan that "things weren't too good" (R. 122a). None of these payments were reflected in any note of indebtedness nor were they ever repaid (R. 123a–124a).

The petitioner did not take the stand at the trial but prior admissions made by him before a United States Senate Committee on Improper Activities in the Labor and Management Field were introduced by the government. It was shown that the petitioner had stated, concerning the Esco strike, that he "was sent in there to try and arbitrate and get the contract signed and settled" (R. 145a–146a) and that it was his "job to try and end strikes as well as organize them" (R. 148a). At the trial, James Hoffa, general president of the Teamsters and chairman of the central conference, testified that the petitioner was an organizer in the central conference whose duties were never reduced to writing (R. 34a, 47a) and who was directly respon-

sible only to Hoffa and Harold Gibbons, secretary-treasurer of the central conference (R. 48a). Hoffa denied sending the petitioner to Pittsburgh concerning the Esco labor problem (R. 50a–51a), stating that Teamsters' Local 211 was in the eastern conference,[2] not the central conference, and that the petitioner had no jurisdiction there (R. 44a). Hoffa testified, however, that he discussed the dispute with the petitioner because "it affected some part of the Central Conference" (R. 43a). He also authorized the reimbursement of expenses to the petitioner for his trips to Pittsburgh on the occasions involved herein (R. 37a–41a, 73a), stating that he (Hoffa) assumed the petitioner was on central conference business while there (R. 41a). The evidence also showed that Callahan and Weinheimer had met with Hoffa concerning the labor dispute when Hoffa was the central conference chairman (R. 115a, 30a–31a).

The defense called several local labor leaders who testified that they never authorized the petitioner to participate in any of the negotiations leading to the settlement of the labor dispute (R. 165a, 166a, 170a, 179a).

ARGUMENT

1. Petitioner asserts that, in view of his defense that he was not a "representative" within the meaning and intent of 29 U.S.C. 186(b),[3] it was error to

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[2] The central conference is composed of states in the central part of the country including Ohio, where Esco had authority to and in fact did transport goods. The eastern conference includes most of the northeastern states including Pennsylvania, the home site of Esco (R. 28a).

[3] To establish a violation of 29 U.S.C. 186(b), the government must show: (1) that the defendant was a representative

receive in evidence admissions as to his representative status made before the Senate Committee on Improper Activities in the Labor and Management Field. He argues that his admissions against interest, made after the commission of the crime, were not properly corroborated by the government under the tests laid down in *Opper* v. *United States*, 348 U.S. 84, and *Smith* v. *United States*, 348 U.S. 147.

The *Opper* case holds that the accused's admissions which tend to prove the commission of the crime and which were uttered subsequent to the crime are in effect "confessions", and therefore must be corroborated but that (348 U.S. at p. 93):

> * * * the corroborative evidence need not be sufficient, independent of the statements, to establish the *corpus delicti*. It is necessary, therefore, to require the Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement. Thus, the independent evidence serves a dual function. It tends to make the admission reliable, thus corroborating it while also establishing independently the other necessary elements of the offense * * *. It is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth. Those facts plus the other evidence besides the admission must, of course, be sufficient to find guilt beyond a reasonable doubt.

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of the employees of the employer who made the payments; (2) that the employer was engaged in interstate commerce; and (3) that the defendant did accept or receive money or a thing of value from the employer (see the court's charge, R. 188a).

The trial court scrupulously followed the *Opper* decision and would not allow the admissions to be introduced in evidence until after the government had offered independent evidence of petitioner's status as a representative of employees (see R. 6a–10a, 132a–141a).[4]

The independent evidence to show petitioner's representative function consisted in part of the testimony that petitioner met with Callahan at a time when negotiations between Local 211 and Esco had broken down; that he promised to arrange a meeting between labor and management and that such a meeting did occur the very next day (see the Statement, *supra*). As the court of appeals held, "[t]his immediate acceptance of [the petitioner's] good offices by local union leadership is some indication of his representative status" (Pet. 7a). Moreover a letter sent to Teamsters headquarters in Washington confirmed that a meeting "between *representatives* of Exhibitors Service Company and this Local Union was held on Saturday, December 28 * * *" (emphasis supplied) (R. 69a, 135a–136a). In addition, there was corroboration in Hoffa's testimony that he was interested in ending the dispute and discussed the strike with the petitioner (R. 33a, 53a), who took all his orders directly from either Hoffa or Harold Gibbons (R. 34a–35a, 48a).

[4] The admissions were used only to prove one element of the offense: the representative capacity of the petitioner (R. 138a). The petitioner does not now allege that the government failed to prove the other two elements (see footnote 3, *supra*).

Although Hoffa denied sending the petitioner to Pittsburgh, Hoffa did authorize the reimbursement of expenses for the trip on the assumption that the petitioner was there on central conference business (R. 37a–41a, 49a–51a, 73a).

The above evidence corroborates the admissions made by the petitioner that he was sent to Pittsburgh to arbitrate and settle the strike (R. 145a–149a). As was held in *Smith* v. *United States*, 348 U.S. 147, 156:

> All elements of the offense must be established by independent evidence or corroborated admissions, but one available mode of corroboration is for the independent evidence to bolster the confession itself and thereby prove the offense "through" the statements of the accused.

2. Petitioner also argues that his admissions before the Committee could not be used against him under 18 U.S.C. 3486, as it read prior to 1954. He contends that the Act of August 20, 1954, 68 Stat. 745, amended but did not supersede that provision. Before 1954 the statute provided broadly that statements given before a Congressional committee could not later be used in criminal proceedings against the person making them. The 1954 Act limits the granting of immunity (1) to investigations "relating to any interference with or endangering of * * * the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy or the overthrow of its Government by force or violence," and (2) to cases where testimony is compelled after the witness has claimed his privilege against

self-incrimination.[5] Clearly the petitioner's statements made in 1957 do not come within this protection.

The contention that former 18 U.S.C. 3486 is still in effect is frivolous. The Act of August 20, 1954, enacted "That title 18, United States Code, section 3486, is amended to read as follows:" and there follows a new section, complete and entire in itself, consisting of the section number, a caption and four subsections, (a) through (d). Petitioner's suggestion that the new subsections were to follow, rather than displace, the existing provision is foreclosed by the inclusion in the amended section of the section number and caption, immediately followed, with no indicated omissions, by subsection (a). That the old provision was being displaced in its entirety is confirmed by Section 2 of the amending act, which deleted the old caption (appropriate to the old provision) from the table of sections at the beginning of the chapter and substituted the new caption (appropriate only to the new provision) in its stead.[6]

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[5] The amended provision differs from its predecessor also in that the immunity, when given, is a complete immunity against prosecution, not merely a bar against use of the particular testimony as evidence.

[6] The purpose to displace the old scheme, in which the witness was automatically immunized from the use against him of any testimony given before the committee, with a new scheme granting immunity only in certain cases, and only when the testimony is compelled after a claim of privilege, is also confirmed by the legislative history. See, *e.g.*, S. Rep. No. 153, 83d Cong., 1st Sess., p. 1:

"The important difference between the proposal embodied in S. 16 and the existing immunity statute *which it is proposed to replace* is that the present law provides, in effect, that no testimony which the witness gives may be used against him in

CONCLUSION

For the reasons stated, we respectfully submit that the petition for a writ of certiorari should be denied.

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OCTOBER 1961.

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any subsequent criminal prosecution; whereas the proposed *new* law * * * provides that the witness shall not be prosecuted on account of any transaction, matter, or thing concerning which he is compelled, pursuant to, and in accordance with the provisions of the law to testify. The proposed new law is carefully worded so that the witness would not get an 'immunity bath' *by the mere fact of testifying.*" * * * (Emphasis supplied.)

See also H. Rep. No. 2606, 83d Cong., 2d Sess., pp. 2, 8; United States Code Cong. and Adm. News, vol. 2, 83d Cong., p. 3059 (1954). The legislative history cited by petitioner (Pet. 9–10) is not to the contrary and in fact also reflects the purpose to replace the former broad provision with a more limited one.

U.S. GOVERNMENT PRINTING OFFICE: 1961